IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 485 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SHARIF SEVABHAI MULTANI VANZARA

Appearance:

1. Criminal Appeal No. 485 of 1998
MR KC SHAH, LD. APP for Petitioner No. 1
MR JM BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH
and
MR.JUSTICE H.H.MEHTA

Date of decision: 28/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

1. The State of Gujarat has preferred the present appeal before this Court under Section 377 of the Code of Criminal Procedure, 1973, for enhancement of sentence imposed on the respondent by the learned Additional Sessions Judge, Panchmahals at Godhra, on 15th December, 1997, in Sessions Case No.28/97, whereby the learned Judge convicted the respondent for an offence punishable under Section 326 of Indian Penal Code and sentenced to suffer R.I. for five years, and fine of Rs.200/- and further directed to undergo R.I. for three months in default of payment of fine.

2. The facts of the case may be briefly stated as follows:

2.1 The respondent is the husband of the victim of the offence. It appears from the record and proceedings of the trial court that P.W. Najmaben Adambhai Multani is the wife of the respondent. As per the case of the prosecution, the respondent was not doing any work and, therefore, the victim dislike him and, therefore, she was staying at her parents place. The prosecution also alleged that, at about 8.00 a.m., on 16.10.96, the victim had gone to purchase vegetables and, at that time, the respondent rushed to the spot and poured acid on her person on account of which she sustained injuries on her face, on her chest, on her neck and on her hands. Immediately she was taken to the hospital. FIR was filed and the respondent was arrested and the chargesheet was filed for offences punishable under Sections 307, 326 & 498(A) of the Indian Penal Code. The case was committed to the Court of Sessions. The learned Additional Sessions Judge framed charge against the respondent for the aforesaid offences. The trial was conducted and further statement of the respondent was recorded, and after hearing the parties, the learned trial Judge found the respondent guilty for the offence punishable under Section 326 of the IPC and sentenced him as above. However, the learned trial Judge acquitted the respondent for the offences punishable under Sections 307 and 498(A) of the IPC.

2.2 The respondent has not preferred any appeal against the conviction. The State has preferred appeal for enhancement of punishment.

2.3 It has been contended that, looking to the facts and circumstances of the case, the punishment awarded is too meagre, and even looking to the punishment provided

for an offence under sec.326 of IPC, the trial court has shown unnecessary leniency in awarding sentence for five years and, therefore, the present appeal be allowed and the sentence may be enhanced.

3. Notice was issued to the respondent and Mr.J.M.Buddhbhatti appeared on behalf of the respondent as appointed in Legal Aid. At the hearing, Mr.M.J.Buddhbhatti appeared for Mr.J.M.Buddhbhatti for the respondent and argued the matter on behalf of the respondent. As against this, Mr.K.C.Shah, learned Additional Public Prosecutor appeared for the State.

4. Now, it is a fact that Najmaben was not on good terms with the respondent. Najmaben has made it clear that since the respondent was not doing any work, and she did not like the respondent and, therefore, she was staying at her parents place. This fact has been stated by her right from beginning and even in her evidence, she has confirmed the said position when the evidence was recorded before the trial court as P.W.12 at Exh.27.

5. She has also stated that she has gone to purchase vegetables at about 8.00 a.m. on the date of the incident. The respondent rushed to the spot and poured acid on her person on account of which she sustained injuries on her face, on her neck, on her chest and on her hands. This shows that almost the entire body suffered injury on account of pouring of acid on her person by the respondent. It would be important to note that the learned trial Judge has considered this aspect during the course of his judgment para 37, wherein, it has been stated by the learned Judge that, even when the evidence of the respondent was recorded about one year after the incident, the victim was still in hospital. It appears from the record that after the incident she was relieved from the hospital and she was required to be readmitted in the hospital and, therefore, she remained in hospital for nearly one year.

6. It is also a matter of record that almost entire body of the victim sustained injuries. It was a case of disfigurement. The learned advocate for the respondent has argued before this Court that the respondent actually repented about the misdoing. Learned advocate for the respondent, during the course of his argument, had also canvassed the said argument before the trial court. This does not appear to be a true fact. It is not on record that respondent had made some arrangement for the better treatment of the victim. It is not on record that some arrangement was made for the plastic surgery in respect

of the person of the victim affected by the aforesaid injuries. The victim remained in hospital for nearly one year. It is also required to be seen that the victim was not on good terms with the respondent and, therefore, the victim was staying away at her parents place. The respondent had not necessity of rushing to the market with a vessel of acid in his hand and to pour acid on the person of the victim in the market itself. This was not an outcome of a sudden and a grave provocation. It is not a case that there was some hot exchange of words before the incident took place. The respondent simply went to the market and poured acid on the person of the victim. Looking to the nature of the injuries and looking to the different parts of the body of the victim on which she suffered injuries and looking to the total period of hospitalisation and looking to the facts and circumstances of the case and the manner in which the offence was committed, it is clear that the respondent could not be dealt with any sort of leniency. Disfigurement of face of a woman is required to be seriously considered. It is not more clear as to when the victim was lastly relieved from the hospital. Nevertheless, it remains a matter of record that for nearly one year she was required hospitalisation. This shows the seriousness of injuries suffered by her.

7. Learned advocate appearing for the respondent has argued that the respondent was 22 years of age at the time when the charge was framed in 1997 and, therefore, he is 28 years of age at present. It is true that the respondent is 28 years of age at present. At the same time the age of the victim is also required to be considered. It appears from the record and proceedings of the trial court that the age of the victim was also 22 years at the time when her evidence was recorded in 1997 and, therefore, the victim is also 28 years of age by now. A woman of 28 years age with disfigurement of face at the age of 22 would find it difficult to move in society freely and without covering the face. This fact cannot be omitted from consideration.

8. Considering the above grounds, we find that the quantum of sentence imposed by the trial court is quite inadequate and therefore we find it our duty to interfere in this appeal and to enhance the sentence on the respondent.

9. It is true that by now the respondent must have undergone the jail sentence and he may be required to re-enter the jail. That would not be a ground for not allowing the appeal and for not enhancing the punishment.

The total punishment provided for an offence punishable under Section 326 of the IPC is imprisonment for life. This would also be a consideration for choosing or selecting the quantum of punishment to be imposed on the respondent. We are of the view that if the respondent is inflicted with the punishment of R.I. for 10 years, in all it would meet the ends of justice. It would also be appropriate to impose fine of Rs.5,000/on the respondent and in case of payment of fine by the respondent, same should be paid to the victim by way of compensation.

10. For the foregoing reasons, this appeal is allowed. The judgment and conviction recorded by the trial court are partly modified and instead of R.I. for five years, we sentence the respondent to suffer R.I. for 10 years and to pay fine of Rs.5,000/-. In default of payment of fine, the respondent shall undergo R.I. for one year. In case the fine is paid, the entire amount shall be paid to victim Najmaben daughter of Adambhai of Santrampur in Panchmahals District. The office shall immediately send a copy of the order to the trial court to enable the trial court to issue appropriate warrant to the respondent so that the respondent may serve out the remaining portion of sentence. The period for which the respondent has undergone sentence and the period for which he may be entitled to set off may be deducted from the total period of punishment inflicted on the respondent as per this order. The amount of fine which has already been paid may be deducted from the aforesaid amount of fine.

(D.P. Buch, J.)

(H.H. Mehta, J.)

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